IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 672 of 2001
in
SPECIAL CIVIL APPLICATION No 162 of 1991

and

CIVIL APPLICATION No 11849 of 2000

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT
and
HON'BLE MR.JUSTICE S.R.BRAHMBHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SRIDHARAN K. KARIEL

Versus

STATE OF GUJARAT & OTHERS

Appearance:

1. LETTERS PATENT APPEAL No. 672 of 2001

MR NIKHIL S KARIEL for the Appellant

MR DIPEN DESAI, AGP for the Respondents

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT
and
HON'BLE MR.JUSTICE S.R.BRAHMBHATT

Date of decision: 24/02/2005

ORAL JUDGEMENT

(Per : HON'BLE MISS JUSTICE R.M.DOSHIT)

The appellant, a retired Police Officer, challenges the judgment and order dated 21st July, 2000 passed by the learned Single Judge in Special Civil Application No.162/1991.

The appellant then a Head Wireless Operator was posted at Rajkot in the year 1978. On his posting at Rajkot he was allotted a residential quarter. In the month of October, 1982 the appellant was transferred from Rajkot to Surendranagar. However, he retained the residential quarter at Rajkot. Pursuant to the application made by the appellant he was permitted to occupy the said quarter upto 30th November, 1983. His request for further extension made on 16th December, 1983 was rejected on 20th December, 1983. As the appellant failed to vacate the said quarter he was given notice for eviction. Feeling aggrieved, he approached the Civil Court in Regular Civil Suit No.8/1984. By interim order made in the said suit by the learned Civil Judge (S.D.), Rajkot the respondents were restrained from evicting the appellant from the said quarter. The appellant handed-over the vacant possession of the said quarter at Rajkot on 15th May, 1985. As the appellant had retained the said residential quarter beyond his entitlement, by notice dated 7th April, 1986, as modified by order dated 14th November, 1986 he was called upon to pay economic rent @ Rs.595=00 per month from 1st December, 1983 till 14th November, 1986. Feeling aggrieved, the appellant preferred appeal before the Director General and Inspector General of Police which came to be rejected on 19th November, 1990. Feeling aggrieved, the appellant preferred the above Special Civil Application No.162/1991 and challenged the above referred order dated 19th November, 1990. He also prayed for refund of the amount of economic rent recovered from him. The learned Single Judge has, by impugned judgment and order, dismissed the petition. Therefore, the present Appeal.

Learned advocate Mr.Kariel has submitted that though the appellant had vacated the residential quarter in question on 12th May, 1985 and had requested the concerned authority to take-over the possession of the said quarter, in view of the pending dispute about the unpaid electricity bills the possession was not taken

over by the concerned authority until 14th November, 1986. He has further submitted that since his transfer to Surendranagar, by order dated 7th December, 1983 the appellant was transferred from Surendranagar to Gondal within the jurisdiction of the Police Commissioner, Rajkot city. As the rent free accommodation was not available at Gondal the appellant had applied for permission to occupy the quarter in question at Rajkot. Thus, if at all the appellant was in illegal possession of the quarter in question it was from 1st December, 1983 to 7th December, 1983. The appellant, therefore, could not have been charged economic rent except for the aforesaid period from 1st December, 1983 to 7th December, 1983. Besides, as the appellant had been in occupation of the said quarter he was not paid the house rent allowance. Thus, the appellant has suffered double jeopardy. On one hand he has been deprived of the house rent allowance on the other hand economic rent has been recovered from the appellant.

After arguing the Appeal at length, Mr.Kariel has submitted that the appellant shall make a representation to the State Government in the subject matter. He, therefore, seeks leave to withdraw this Appeal.

Leave is granted. Appeal is disposed off as withdrawn. Civil Application stands disposed off. There shall be no order as to cost.

In the event the appellant makes representation to the State Government within 3 weeks from today as aforesaid, the same shall be considered by the State Government as expeditiously as possible preferably within 4 months from the date of the receipt of the representation. It is clarified that the decision of the State Government shall be final and binding to the appellant. The decision of the State Government shall not give fresh cause of action to the appellant.

(Ms. R.M.Doshit, J.)

(S.R.Brahmbhatt, J.)

/sakkaf